

IP 99-0015-CR 1 Y/F USA v Higgins
Magistrate Kennard P. Foster

Signed on 04/24/2006

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. EV 99-15-CR-01 (Y/F)
)	
DONALD M. HIGGINS,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Richard L. Young, Judge, on April 18, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on January 23, 2006, and to submit to Judge Young proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings regarding this matter were held on April 21, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Higgins appeared in person and his appointed counsel, James McKinley, Office of the Indiana Federal Community Defender’s Office. The government appeared by Jim Warden, Assistant United States Attorney. U. S. Parole and Probation appeared by Keith Kesterson, U. S. Parole and Probation Officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That James McKinley, Office of the Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Higgins in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Higgins and his counsel who informed the Court they had read and understood the specifications of violation charged herein and waived further reading thereof.

3. That Mr. Higgins was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Higgins would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Higgins had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Higgins had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Young's designation entered on January 23, 2006.

7. Mr. Higgins stated his readiness to waive the preliminary hearing. Mr. Higgins then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Higgins, by counsel, stipulated that he committed the specified violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed on January 23, 2006, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>The defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month.</p> <p>The offender failed to submit a monthly report due January 5, 2006. Home visits on 1/10/06 and 1/19/06 with instructions to report were unsuccessful. A home visit on 1/13/06 also was unsuccessful.</p>
2	<p>The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.</p> <p>Information provided on behalf of the offender's landlord confirmed the offender's last known address, 1145 E. Market Street, Apartment 5, was vacant. The offender moved out without notifying the landlord or providing a forwarding address. To date, the offender has failed to notify this officer of his intention to move and has not provided his new address.</p>
3	<p>The defendant shall participate in a program approved by the Probation Department for substance abuse, which program may include testing to determine if the defendant has reverted to the use of drugs or alcohol.</p> <p>The offender arrived at VOA on May 31, 2005, after he requested the placement to assist with establishing residence and employment plans. He was referred for substance abuse treatment at VOA on June 1, 2005. He was subsequently released from VOA on November 23, 2005. Upon release, the offender failed to continue reporting for substance abuse treatment and last participated in treatment on November 15, 2005.</p>

The Court placed Mr. Higgins under oath and directly inquired of him whether he admitted violations of the specifications of his supervised release set forth above. Mr. Higgins stated that he admitted the above violations as set forth. The Court now finds there is a basis in fact for his admissions and accepts same.

Counsel for the parties further stipulated the following:

1) Mr. Higgins has a relevant criminal history category of V. *See*, U.S.S.G. §7B1.4(a).

2) The most serious grade of violation was stipulated to by the parties to be a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).

3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Higgins is 7-13 months.

4) The parties agreed on the appropriate disposition of the case as follows:

The defendant be sentenced to a period of confinement of 10 months to the custody of the Attorney General, with no supervised release to follow.

The Court, having heard the admissions of the defendant, the stipulations and evidence submitted by the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **REVOKED** and Donald Marshall Higgins is sentenced to the custody of the Attorney General or his designee for a period of 10 months. After service of his sentence, the defendant shall not be subject to supervised release.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served with a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of facts and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Higgins' supervised release and the sentence imposed of imprisonment of 10 months, in the custody of the Attorney General or his designee. There shall be no term of supervised release at the conclusion of Mr. Higgins' term of incarceration. Service of Mr. Higgins' term of imprisonment is to begin immediately.

The Magistrate Judge requests that Keith Kesterson, U. S. Parole and Probation Officer, prepare for submission to the Honorable Richard L. Young, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

IT IS SO RECOMMENDED this 24th day of April, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

Distribution:

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U. S. Parole and Probation

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